services which any other physician might render, rendered by him under direction of the board of health without any express agreement for compensation."

In Appeal of Chairman of Board of Health *v.* Board of County Commissioners (89 Minn., 402; 95 N. W., 221) it was said: "A town or village board of health, formed under the provision of the general statutes, one of whose members is a practicing physician and surgeon, may employ such physician to act for the board in all matters requiring such services."

In Village of St. Johns *v.* Board of Supervisors (111 Mich., 609; 70 N. W., 131) it was held that: "The fact that the health officer of a village is a member of the board of health does not preclude such board from fixing his compensation by agreement for services performed by him in preventing the spread of smallpox; and the village may recover the amount so paid him from the county where such amount is reasonable."

In City of Mankato *v.* County of Blue Earth (87 Minn., 425; 92 N. W., 405) it was said: "The county is liable, under laws 1902 (ex. sess.), chapter 29, for the necessary additional salary paid the local health inspector for extra services in locating and combating contagious diseases."

In Labrie *v.* Manchester (59 N. H., 120; 47 Am. Rep., 179), it was held: "Where health officers of a city are empowered to remove persons infected with smallpox and helpless to a pesthouse, they have implied authority to employ nurses for them at the expense of the city."

Without multiplying the authorities, it may be said that the plaintiff was entitled to recover the expenses actually incurred and paid by him in the suppression of the smallpox epidemic in question, together with a reasonable compensation for his professional services.

The judgment of the district court was right, and it is therefore affirmed.

GEORGIA COURT OF APPEALS.

Habit-Forming Drugs—Sale of—Evidence Necessary to Convict.

BUTLER *v.* STATE, 81 S. E. Rep., 370. April 18, 1914.

There is no hard and fast rule requiring that the nature of a drug shall be proved by chemical analysis and not otherwise.

Testimony of cocaine users that the drug had been purchased from the defendant on several occasions is sufficient to sustain a verdict of guilty which was rendered by the jury, although the analysis of a sample purchased for the purpose of securing evidence failed to show any trace of cocaine.

The defendant was convicted under section 459 of the Penal Code of Georgia of unlawfully selling cocaine.

On appeal it was urged by the defendant (among other reasons) that the case should be reversed because:

(6) "That the State failed to prove the corpus delicti in said case, in that it failed to demonstrate that the article alleged to have been purchased from the defendant, which was chemically analyzed by Dr. Littleton, an expert witness for the State, in the presence of the jury, was cocaine; the said analysis having failed to show the slightest trace of cocaine, therefore demonstrating that the article alleged to have been purchased was not cocaine, and that there was no violation of law, if the said article had been purchased from defendant."

(7) "Because the court erred, in delivering his charge to the jury, in commenting upon the offense with which the defendant was charged, in using the language: 'It is a misdemeanor, and a serious one, so that if the evidence established her guilt, then it is your duty to return a verdict of guilty.' "

The court (WADE, J.) said:

There was ample evidence to sustain the verdict, without considering the testimony of the expert as to the nature of the substance tested by him in the presence of the jury, or his further testimony as to the nature of the drug delivered to him by the witness

Guy Sturgis and previously tested. Eva Holmes testified that she had often bought cocaine from the defendant at the defendant's home in the city of Augusta, without a prescription, paying money therefor. She testified fully as to the effect cocaine had on her, and as to the different varieties of the drug on sale. Rosa Brown testified that she was a habitual user of cocaine, and had bought the same from the defendant three or four times, and that she began the use of the drug the previous summer at the house of the defendant. Annie Lou Jackson testified that she bought cocaine from the defendant several times at the defendant's house, and never had a prescription therefor, and that she had not bought any from the defendant since "last summer." Elise Etheridge testified that she had bought cocaine from the defendant many times, and never had a prescription from dentist, physician, or veterinary surgeon. Georgia Moore testified that she often visited the defendant's home in Augusta, and had been buying cocaine from her ever since the preceding summer (1912), without considering the transaction of June, 1912, when she bought some substance for Policeman Mathews. All these witnesses testified that they had been habitual users of the drug and were familiar with its effects, and swore absolutely that they had bought this particular drug from the defendant within two years preceding the time when the accusation was preferred against her.

It does not appear that any of the five female witnesses above mentioned had any chemical knowledge of the drug in question, but it does appear that they had the fullest and most unfortunate knowledge of its physical effects, and of the consequences arising from its use, and they all swore positively and without objection that the drug was cocaine. There is no hard and fast rule requiring that the nature of a substance should be proved by analysis, and not otherwise. In seeking the truth, the law looks to the highest and best evidence obtainable, but, in its absence, evidence of less probative value may be sufficient, especially where it is undisputed, and where it is admitted without objection. The defendant's counsel must have deemed the knowledge of the nonexpert witness accurate and sufficient, since the record discloses no effort to test the value of such knowledge or the basis upon which it rested.

The corpus delicti was amply proved by the testimony of the five women who swore against the defendant, without considering the evidence of the chemical expert. The evidence failed to show that the package delivered to the "wagon man" by a policeman was the same package received by Guy Sturgis at the police barracks, marked "Etta Butler, evidence dope, June 1, 1912, witness Sergeant Elliot," since it does not appear that Sturgis himself was the "wagon man" or that he had any knowledge to the effect that this package was the package taken from Georgia Moore. Hence the corpus delicti is not proven by this evidence; nor is there any evidence as to this particular package that is sufficient to connect the defendant therewith, and to uphold a conviction; but the other evidence is ample, as stated above.

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Taken by itself, the language of the trial judge in the charge complained of in the seventh ground of the motion for a new trial would call for careful consideration and might possibly demand a new trial; but, when taken in connection with the associated portion of the charge, it could not have injured the defendant. It appears that the chemical expert was examined as to the terrible consequences arising from the unrestricted and habitual use of cocaine and that he gave a graphic but concise statement of the degrading and horrible effects of the drug, and this evidence was admitted without objection; and it appears also that the defendant's counsel examined some of the State's witnesses at length on the consequences of its use and the serious effects thereof. The judge, in charging the jury (with the evident desire, as we interpret the charge, to protect the defendant from the injurious effect of any evidence as to the grave results arising from the use of the drug), used the following language: "I charge you that the evidence of an expert, relative to the pernicious effects of cocaine upon the human system and the degrading effect it has upon the moral character of a constant user of

the same, should be considered as a scientific statement of its general effects upon a human being, and should not be considered by the jury in their deliberation over the question at issue in this case as to the innocence or guilt of the defendant in selling the prohibited drug. In other words, the scientific effect of the drug upon the human system generally would not determine whether the defendant in this case sold or did not sell the drug. Gentlemen, you consider the effect, in view of the seriousness of the offense; but, however serious, the offense upon which a party is charged does not in itself elucidate the question of guilt or innocence. The question for you to try is: Was she guilty of selling cocaine? If she was guilty, then it is your duty to return a verdict of guilty, because it is a violation of law. It is a misdemeanor, and a serious one; so that, if the evidence establishes her guilt, then it is your duty to return a verdict of guilty. On the other hand, it matters not how serious an offense is, if the party upon trial is not guilty, then it is your duty to acquit." The jurors must be presumed to be men of ordinary intelligence, and the evident intention of this charge was to impress upon the jury the fact that they were to look to the question of guilt or innocence and not to regard the gravity of the offense in determining the guilt of the accused. (Lane *v.* State, 140 Ga., 222; 78 S. E., 837. Vanderford *v.* State, 126 Ga., 753; 55 S. E., 1025. Johnson *v.* State, 128 Ga., 102; 57 S. E., 353. Lyles *v.* State. 130 Ga., 302; 60 S. E., 578.)

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